THE HON'BLE SRI JUSTICE C.V. RAMULU

WRIT PETITION No.20673 OF 2005

ORDER:

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This Writ Petition is directed against the order passed in I.A.No.9 of 2005 in W.C.No.213 of 2004 dated 16.8.2005 on the file of the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad.

It seems that respondents 2 to 4 approached the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad and filed W.C.No.213 of 2004. The said application was taken up and an order was passed holding that the applicants are entitled for compensation of Rs.2,86,043/- together with stamp fee of Rs.574/- and advocate fee of Rs.500/-, totaling to Rs.2,87,117/-.

According to the learned counsel for the petitioner, the order passed by the 1st respondent-Commissioner for Workmen's Compensation and Assistant Commissioner of Labour-I, Hyderabad is an *ex parte* order. In view of the same, I.A.No.9 of 2005 was filed under Order 9, Rule 13 of Code of Civil Procedure seeking to set aside the *ex parte* order. The said application was dismissed on the ground that the provisions of Order 9, Rule 13 of the Code of Civil Procedure are not applicable to the proceedings before the Commissioner.

Learned counsel for the petitioner has drawn the attention of the Court to Rule 41 of the Workmen's Compensation Rules, 1924, which reads as under:

> **41. Certain provisions of Code of Civil Procedure, 1908, to apply:-**
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> Save as otherwise expressly provided in the Act or these Rules the following provisions of the First Schedule to the Code of Civil Procedure, 1908, namely, those contained in Order V, Rules 9 to 13 and 15 to 30; Order IX; Order XIII, Rules 1 and 2, shall apply to proceeding before Commissioners, in so far as they may be applicable thereto:
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> Provided that-

a. for the purpose of facilitating the application of the said provisions the Commissioner may construe them with such alterations not affecting the substance as may be necessary or proper to adapt them to the matter before him;

b. the Commissioner may, for sufficient reasons, proceed otherwise than in accordance with the said provisions, if he is satisfied that the interests of the parties will not thereby be prejudiced.

From the above, it is clear that even before the Commissioner for Workmen's Compensation, petition under Order 9, Rule 13 of the Code of Civil Procedure is maintainable. In view of the same, the impugned order is set aside and I.A.No.9 of 205 is restored to the file of the Commissioner for Workmen's Compensation and the Assistant Commissioner of Labour-I, Hyderabad, and the Commissioner is directed to dispose of the same on merits after issuing notice to the other side.

The Writ Petition is accordingly allowed to the extent indicated above. No costs.

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C.V. RAMULU, J.

21st September, 2005.